

# EXTENSIONS OF REMARKS

## POCKET-VETO POWER

**HON. J. DENNIS HASTERT**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 19, 2000*

Mr. HASTERT. Mr. Speaker, I submit for the RECORD a copy of a letter signed jointly by myself and the Democratic Leader, Mr. Gephardt. It is addressed to President Clinton. In it, we express our views on the limits of the "pocket-veto" power. I also submit a copy of the letter referenced therein, which was sent to President Bush on November 21, 1989, by Speaker Foley and Republican Leader Michel.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
*Washington, DC, September 7, 2000.*

Hon. WILLIAM J. CLINTON,  
*The President, The White House, Washington, DC.*

DEAR MR. PRESIDENT: This is in response to your actions on H.R. 4810, the Marriage Tax Relief Reconciliation Act of 2000, and H.R. 8, the Death Tax Elimination Act of 2000. On August 5, 2000, you returned H.R. 4810 to the House of Representatives without your approval and with a message stating your objections to its enactment. On August 31, 2000, you returned H.R. 8 to the House of Representatives without your approval and with a message stating your objections to its enactment. In addition, however, in both cases you included near the end of your message the following:

Since the adjournment of the Congress has prevented my return of [the respective bill] within the meaning of Article I, section 7, clause 2 of the Constitution, my withholding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to "pocket veto" bills during an adjournment of the Congress, to avoid litigation, I am also sending [the respective bill] to the House of Representatives with my objections, to leave no possible doubt that I have vetoed the measure.

President Bush similarly asserted a pocket-veto authority during an intersession adjournment with respect to H.R. 2712 of the 101st Congress but, by nevertheless returning the enrollment, similarly permitted the Congress to reconsider it in light of his objections, as contemplated by the Constitution. Your allusion to the existence of a pocket-veto power during even an intrasession adjournment continues to be most troubling. We find that assertion to be inconsistent with the return-veto that it accompanies. We also find that assertion to be inconsistent with your previous use of the return-veto under similar circumstances but without similar dictum concerning the pocket-veto. On January 9, 1996, you stated your disapproval of H.R. 4 of the 104th Congress and, on January 10, 1996—the tenth Constitutional day after its presentment—returned the bill to the Clerk of the House. At the time, the House stood adjourned to a date certain 12 days hence. Your message included no dictum concerning the pocket-veto.

We enclose a copy of a letter dated November 21, 1989, from Speaker Foley and Minority Leader Michel to President Bush. That

letter expressed the profound concern of the bipartisan leaderships over the assertion of a pocket veto during an intrasession adjournment. That letter states in pertinent part that "[s]uccessive Presidential administrations since 1974 have, in accommodation of Kennedy v. Sampson, exercised the veto power during intrasession adjournments only by messages returning measures to the Congress." It also states our belief that it is not "constructive to resurrect constitutional controversies long considered as settled, especially without notice or consultation." The Congress, on numerous occasions, has reinforced the stance taken in that letter by including in certain resolutions of adjournment language affirming to the President the absence of "pocket veto" authority during adjournments between its first and second sessions. The House and the Senate continue to designate the Clerk of the House and the Secretary of the Senate, respectively, as their agents to receive messages from the President during periods of adjournment. Clause 2(h) of rule II, Rules of the House of Representatives; House Resolution 5, 106th Congress, January 6, 1999; the standing order of the Senate of January 6, 1999. In Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974), the court held that the "pocket veto" is not constitutionally available during an intrasession adjournment of the Congress if a congressional agent is appointed to receive veto messages from the President during such adjournment.

On these premises we find your assertion of a pocket veto power during an intrasession adjournment extremely troublesome. Such assertions should be avoided, in appropriate deference to such judicial resolution of the question as has been possible within the bounds of justifiability.

Meanwhile, citing the precedent of January 23, 1990, relating to H.R. 2712 of the 101st Congress, the House yesterday treated both H.R. 4810 and H.R. 8 as having been returned to the originating House, their respective returns not having been prevented by an adjournment within the meaning of article I, section 7, clause 2 of the Constitution.

Sincerely,

J. DENNIS HASTERT,  
*Speaker.*  
RICHARD A. GEPHARDT,  
*Democratic Leader.*

CONGRESS OF THE UNITED STATES,  
*Washington, DC, November 21, 1989.*  
Hon. GEORGE BUSH,  
*President of the United States, The White House, Washington, DC.*

DEAR MR. PRESIDENT: This is in response to your action on House Joint Resolution 390. On August 16, 1989, you issued a memorandum of disapproval asserting that you would "prevent H.J. Res. 390 from becoming a law by withholding (your) signature from it." You did not return the bill to the House of Representatives.

House Joint Resolution 390 authorized a "hand enrollment" of H.R. 1278, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, by waiving the requirement that the bill be printed on parchment. The hand enrollment option was requested by the Department of the Treasury to insure that the mounting daily costs of the savings-and-loan crisis could be stemmed by the earliest practicable enactment of H.R.

1278. In the end, a hand enrollment was not necessary since the bill was printed on parchment in time to be presented to you in that form.

We appreciate your judgment that House Joint Resolution 390 was, in the end, unnecessary. We believe, however, that you should communicate any such veto by a message returning the resolution to the Congress since the intrasession pocket veto is constitutionally infirm.

In Kennedy v. Sampson, the United States Court of Appeals held that "pocket veto" is not constitutionally available during an intrasession adjournment of the Congress if a congressional agent is appointed to receive veto messages from the President during such adjournment. 511 F.2d 430 (D.C. Cir. 1974). In the standing rules of the House, the Clerk is duly authorized to receive messages from the President at any time that the House is not in session. (Clause 5, Rule III, Rules of the House of Representatives; House Resolution 5, 101st Congress, January 3, 1989.)

Successive Presidential administrations since 1974 have, in accommodation of Kennedy v. Sampson, exercised the veto power during intrasession adjournments only by messages returning measures to the Congress.

We therefore find your assertion of a pocket veto power during an intrasession adjournment extremely troublesome. We do not think it constructive to resurrect constitutional controversies long considered as settled, especially without notice of consultation. It is our hope that you might join us in urging the Archivist to assign a public law number to House Joint Resolution 390, and that you might eschew the notion of an intrasession pocket veto power, in appropriate deference to the judicial resolution of that question.

Sincerely,

THOMAS S. FOLEY,  
*Speaker.*  
ROBERT H. MICHEL,  
*Republican Leader.*

## BLUE RIBBON SCHOOL WINNER

**HON. RANDY "DUKE" CUNNINGHAM**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 18, 2000*

Mr. CUNNINGHAM. Mr. Speaker, I rise today to congratulate Bernardo Heights Middle School in Rancho Bernardo and its leaders, Principal, Maureen Newell and Superintendent, Dr. Bob Reeves. Bernardo Heights has been designated by the U.S. Department of Education as a National Blue Ribbon School for 2000. I am proud to inform my colleagues that my district had an amazing record of eleven schools selected for that prestigious honor this year. I would also like to note that the Academy of Our Lady of Peace right outside my district in San Diego County was also named a Blue Ribbon School. I applaud the educators, students and communities in each of the San Diego County schools who pulled together in pursuit of educational excellence.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Blue Ribbon Schools are recognized as some of the nation's most successful institutions, and they are exemplary models for achieving educational excellence throughout the nation. Not only have they demonstrated excellence in academic leadership, teaching and teacher development, and school curriculum, but they have demonstrated exceptional levels of community and parental involvement, high student achievement levels and strong safety and discipline.

After schools are nominated by state education agencies for the Blue Ribbon award, they undergo a rigorous overview of their programs, plans and activities. That is followed with visits by educational experts for evaluation. Ultimately, those schools which best demonstrate strong leadership, clear vision and mission, excellent teaching and curriculum, policies and practices that keep the schools safe for learning, family involvement and evidence of high standards are selected for this prestigious award. I am pleased that they are now receiving the national recognition they are due.

As school and community leaders head to Washington for the Department of Education awards ceremony, I want to thank them once again for a job well done. More satisfying than any award, these leaders will have the lifelong satisfaction of having provided the best education possible and a better future for thousands of children. I am proud of what they have achieved, and want to share their achievements so that more people benefit from their accomplishments. I ask that a summary of Bernardo Heights Middle Schools' superior work be included in the record:

Located in northern San Diego County, Bernardo Heights Middle School (BHMS) is one of five middle schools in the award-winning Poway Unified School District. The school has a sprawling suburban campus where students are active participants in the learning process. The dynamic teachers are committed to developing a love of learning that will last a lifetime. Bernardo Heights has set expectations and academic standards that foster well being, encourage appreciation of the arts, and at the same time embrace diversity. BHMS is continuously re-evaluating their curriculum and the needs of its students. Using parent input, needs assessments, and up-to-date teaching practices and methods, their curriculum provides a solid scope and sequence that assures students will be ready for the 21st Century.

Knowing the pressures and variables of modern society, Bernardo Heights has developed an array of assistance programs to form a safety net for students who are at-risk. From parent-teacher-student conferences to support groups, tutorials to mentoring programs, they do "whatever it takes" to provide all students every opportunity to succeed. Almost 80% of all students scored above the 50th percentile on the SAT 9 reading, writing and math tests and Average Daily Attendance (ADA) is at 96.5%. From its unique architecture to the exciting learning environment within its classrooms, Bernardo Heights Middle School is a dynamic, active educational center, filled with the promise of tomorrow.

## TRIBUTE TO SERGEANT WILLIAM F. SNELL

### HON. LORETTA SANCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 19, 2000*

Ms. SANCHEZ. Mr. Speaker, today I rise to pay tribute to Sergeant William F. Snell, an officer with the California Highway Patrol. Sergeant Snell is retiring from the California Highway Patrol after 32 years of service to the State of California.

Sergeant Snell began his career as an officer with the California Highway Patrol in 1968. Upon his graduation from the academy, Sergeant Snell was assigned to several offices in California, including Baldwin Park, Riverside, San Bernardino, Central Los Angeles and Santa Ana in July 1986.

In Santa Ana, Sergeant Snell held several administrative positions. He was the sergeant in charge of commercial enforcement within the Santa Ana Area. As sergeant in charge, he directed the commercial officers within the Border Division area, including San Diego and Orange County offices.

Sergeant Snell is a dedicated officer who has served the people and the State of California with highest degree of professionalism. During his career with the Highway Patrol, Sergeant Snell demonstrated his outstanding qualities of management and leadership. Sergeant Snell upheld the mission of the California Highway Patrol to manage and regulate traffic and to achieve "safe, lawful and efficient use of the highway transportation system." An officer in the California Highway Patrol must possess courage, strength, and heroism in the face of the unknown.

I commend Sergeant Snell for his dedication to the safety of California's citizens and to the high caliber of service that he gave to his profession. Colleagues, please join with me in recognizing Sergeant William F. Snell as a man of dignity, honor and purpose and in wishing him many happy years of retirement.

## HOW DRUG PROFITS DRIVE DOCTORS TO INCREASE DRUG UTILIZATION

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 19, 2000*

Mr. STARK. Mr. Speaker, at the Department of Justice's prodding, Medicare and Medicaid are finally going to reimburse drugs at a more accurate rate. In the past, we have paid for drugs at 95% of the Average Wholesale Price (AWP)—a wholly artificial and often grossly inflated price.

The action by HCFA should be welcome by taxpayers. But it should also be welcome by patients—and not just because patients will now face lower co-payment amounts. The worst aspect of the AWP pricing abuse has been that it distorts medical judgment, causing many—not all, but many—doctors to increase their utilization of drugs on which the doctors can make the most money on the "spread" between the listed AWP price, and what the actual cost to the provider is.

The following data shows the phenomenon: there is absolutely no reason that the nation's

utilization of ipratropium bromide has soared—other than doctors can now make over a 100% profit on the product. If you need ipratropium bromide, you should get it. You should not be getting it because your doctor makes a bigger and bigger profit on it.

I think the evidence will show that there are better cancer drug fighting products available to people, which are not being used because the doctors make more profit on the poorer quality product.

Reform of the AWP will not only save dollars—it will stop an insidious form of medical malpractice.

How has Medicare Utilization for the Inhalation Drug Ipratropium Bromide (HCPCS codes K0518 and J7645) changed as the "spread" or profit that doctors can make on the use of the product has increased?

In 1995, Medicare paid \$3.11 for a unit, and that's what it cost the provider. There was no spread, and Medicare spent \$14,426,108 on the product.

In 1996, Medicare reimbursed \$3.75 a unit, but the cost to doctors was only \$3.26, giving a 49 cent profit or a 15% spread. Interest in the product picked up, with Medicare spending \$47,388,622.

In 1997, Medicare's reimbursement was \$3.50 a unit, but the providers's true cost was only \$2.15, giving a profit spread of \$1.35 or 63%. Sales of the product really starting taking off, and Medicare spent \$96,204,639 on the product.

In 1998 and 1999, Medicare reimbursed \$3.34 for a unit. In 1998, doctors could get it for about \$1.70, giving them a profit of 96% or \$1.64 per unit. Sales totaled \$176,887,868! In 1999, the drug was available for \$1.60, giving users a 108% profit. We don't have the data on total 1999 Medicare expenditures on this product yet, but I bet, Mr. Speaker, that it is higher than ever.

This example is exhibit #1 why we need AWP reform.

## HONORING THE AMERICAN BUSINESS WOMEN'S ASSOCIATION FOR ITS EFFORT TO ADVANCE WOMEN IN BUSINESS

### HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 19, 2000*

Mr. GOODLING. Mr. Speaker, I rise today to honor the American Business Women's Association for its dedication to promote the professional, educational, cultural, and social advancement of business women.

September 22, 2000 will mark the 51st anniversary of the founding of the American Business Women's Association. For over 50 years the members of this association have recognized that education and skilled training are crucial in today's technological society. These enterprising women hold active, responsible positions on all levels of business and will play an increasingly powerful role in the American workforce.

The local chapters of the A.B.W.A. have made scholarships available to students to further their education and have provided financial assistance to students returning to the workforce by enabling them to attend college. Through the improvement of individual skills,